

standards for materiality of errors and omissions discovered in the independent audit process and, if appropriate, take steps to implement such standards."³⁵

SWBT has grave concerns if the Commission's intent is to develop a materiality standard that it will impose upon independent auditors. Were that to happen, independent auditors could not, according to American Institute of Certified Public Accountants (AICPA) professional standards, provide a "fairly presents" opinion.

The independent auditor's professional judgment in the area of materiality ought not to be superseded. An independent auditor is required to determine the scope of an audit engagement, in accordance with generally accepted auditing standards. The independent auditor will determine the procedures, including materiality limits, necessary to provide a basis for expressing an opinion on the fairness of the financial statements.

If the Commission insists on imposing an arbitrary materiality standard on independent auditors in the planning process, then the Commission would effectively prevent independent auditors from rendering either a "fairly presents" opinion or an attestation opinion. The only action that the AICPA professional standards would allow the independent auditor to take would be a review of "agreed to"

³⁵NPRM, para. 30.

procedures. A report based upon such procedures could not be made available for general distribution. Thus the Commission's proposed arbitrary materiality standard would: (a) actually preclude the auditor from issuing a "fairly presents" opinion, and (b) deny interested parties access to the report of the independent auditors. This proposed course of action would not serve the public interest.

B. The Commission's Original Computer III Discrimination Safeguards Are Still Adequate.

1. The California Decision Affirmed The Effectiveness Of The Computer III Basic Service Discrimination Safeguards.

One of the best indications of the adequacy of the Commission's original Computer III discrimination safeguards is the fact that, despite vacating the three major Computer III Orders in their entirety, the Ninth Circuit in the California decision spoke approvingly about those particular safeguards. The Court stated:

The FCC found that technological and market developments in the last few years have reduced the danger that the BOCs will discriminate against their competitors in providing access to the telephone network. We agree that the Commission could reasonably decide that changed circumstances have made it more difficult for the BOCs to provide competitors with inferior access.

The FCC could reasonably conclude that the emergence of powerful competitors such as IBM, which have the resources and expertise to monitor the quality of access to the network, reduces the BOCs' ability to discriminate in providing access to their competitors. The record also supports the

proposition that these large corporate competitors--unlike the average telephone user--have a growing capability of bypassing local exchanges by using microwave systems or cable networks for linking their computers with their customers' terminals.

Moreover, the network-access policies that the FCC proposes to substitute for structural separation involve new technologies for detecting inferior access that have not previously been available. The FCC's policy of Comparably Efficient Interconnection (CEI) is designed to ensure that each BOC will provide competitors with connections to the local exchange that equal the connections available to the BOCs' own enhanced service offerings. Moreover, the Open Network Architecture (ONA) policy requires each BOC to incorporate CEI concepts into the overall design of its basic service network. Thus, the record supports the Commission's finding that technologies for ensuring equal access have improved and may be effective in preventing discrimination in ways not feasible in the past.³⁶

2. There Have Been No Formal Complaints Alleging BOC Basic Service Discrimination.

All of the BOCs have been operating under the terms of various CEI plans for nearly three years, and thus could have attempted to discriminate against competing ESPs regarding delivery of the supporting basic, tariffed services. However, in all that time, to SWBT's knowledge not a single formal complaint has been filed against any BOC alleging such discrimination. Furthermore, not even any informal complaints have been filed against SWBT making such

³⁶905 F.2d 1217, at 1232-33.

allegations, nor is SWBT aware of any having been filed against any other BOC (although, due to the nature of the informal complaint process, some could have been filed against other BOCs without coming to the attention of SWBT).

To be sure, since Computer III began nearly six years ago, certain ESPs have been quick to complain to the Commission about theoretical possibilities of improper BOC conduct in this arena. Thus, the fact that no formal complaints have been filed against any BOC is significant. The Commission would be justified in relying upon this fact to conclude that its original Computer III anti-discrimination safeguards have indeed been working.

3. The BOCs' Quarterly Installation and Maintenance Reports Show That There Has Been No Discrimination.

One of the Commission's CEI plan requirements is that a BOC must file quarterly reports showing the intervals involved concerning basic service installation and maintenance (I&M) activities on behalf of its own enhanced service operations versus unaffiliated entities, including competing ESPs. Among all of the BOCs, numerous quarterly I&M reports have now been filed with the Commission, and there has been no indication of any deliberate BOC discrimination in this area. Similar reports have also been used effectively for CPE purposes for the past several years.

This fact is significant for two reasons. First, it shows that the Commission has a ready source for determining if such discrimination arises at some point in the future. This is a built-in failsafe for use indefinitely into the future. Second, it shows that all of the steps the Commission has taken to dissuade any such basic service discrimination by the BOCs have in fact been effective. There is no reason to believe, nor any evidence to suggest, that this will change in the future.

4. Price Cap Regulation Will Not Lead To BOC Price Discrimination Against ESPs.

In his Concurring Statement issued along with the NPRM in this proceeding, Commissioner Duggan expressed some concern over the possibility that BOCs might be able to use the pricing flexibility received from price cap regulation to discriminate against competing ESPs in the pricing of basic, tariffed services.³⁷ SWBT understands and appreciates Commissioner Duggan's concern, but for several compelling reasons, there need be no such concern. BOCs would have little incentive to attempt such behavior, and any such attempts should be easily recognized by competitors and regulators and subjected to regulatory and/or judicial corrective actions.

³⁷Commissioner Duggan's Concurring Statement, p. 2.

CERTIFICATE OF SERVICE

I, Martha Marshalek, hereby certify that the foregoing Comments of Southwestern Bell Telephone Company, In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, have been served this 7th day of April, 1995 to the Parties of Record.

Martha Marshalek

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April 7, 1995

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